

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 1088 of 2004 (S/S)

Rect. Nandan Singh Petitioner

Versus

Union of India
Through Secretary,
Ministry of Defence,
Government of India,
New Delhi & others Respondents

Mr. Manoj Tiwari, learned counsel for the petitioner.
Mr. V.B.S. Negi, learned Senior Central Govt. Standing Counsel.

Hon'ble P.C. Pant, J.

Heard learned counsel for the petitioner.

2) By means of this writ petition, the order of discharge from the Army has been challenged by the petitioner.

3) From the annexures filed with the writ petition it is very clear that not only the petitioner slipped from the training period from the Army but also after his dismissal order was set aside the petitioner failed to report to the Unit even after he was asked to join the Unit several times. The last impugned order passed by the Commander-in-Chief himself on the representation of the petitioner which was passed keeping in view the order dated 7th October 2002 passed in writ petition No. 1351 (S/B) of 2002 by this Court, reads as under:

“2. AND WHEREAS in deference to the ibid order of the Hon'ble High Court, I have carefully considered the petition dated 18 Feb 2002 submitted by the said petitioner in the light of all relevant records.

3. AND WHEREAS examination of relevant records that the petitioner had enrolled in the Bengal Engineer Group & Centre Roorkee on 28 Oct

1997. the petitioner had absented himself without leave on five different occasions, that is, from 11 Mar 1998 to 13 March 1998, 22 Mar 1998 to 26 Mar 1998, 31 Mar 1998 to 24 Apr 1998, 30 Apr 1998 to 04 May 1998 and 14 Jun 1998 to 03 May 1999. therefore, his total period of absence from duty was 362 days in his service of 567 days. Consequently, he was tried by Summary Court Martial on 18 May 1999 on five charges, all laid under Army Act Section 39(a) for absenting himself without leave and sentenced "to be dismissed from service and to suffer rigorous imprisonment for two months." On review, the Summary Court Martial Proceedings were set aside by the competent authority on technical grounds.

4. AND WHEREAS, the petitioner has alleged that between 25 Sep 1999 to 28 Nov 2001, his unit failed to inform him to rejoin duty as a consequence of setting aside of his Summary Court Martial proceedings. The petitioner has accordingly prayed for compensation of over rupees fifteen lakhs for the illegal punishment awarded to him and also payments of pay and allowances for the period 28 Oct 1997 to 08 Dec 2001.

5. AND WHEREAS, the record reveals that 2 Training Battalion, BEG & Centre, Roorkee, the unit of the petitioner, had in fact written letters to the petitioner directing him to rejoin the unit. The records further reveals that the unit had also corresponded with the Gram Pradhan, Police Station Didihat and Superintendent of Police Pithoragarh for directing the petitioner to report to the Unit. The petitioner finally rejoined the unit on 21 Nov 2001 and was reinstated in service. In view of the nature and gravity of the offence, the competent authority considered further retention of

the petitioner in service to be against the interest of the organization. He was accordingly discharged from service by the competent authority under clause IV of the table below Army Act section 13 (3). Thus, the contentions of the petitioner are untenable.

6. AND IN PURSUANCE WHEREOF, considering the circumstances of the case, the petition dated 18 Feb 2002 submitted by the petitioner lacks substance and is therefore rejected.

4) The representation has been disposed of after duly considering the issues raised by the petitioner. It is a case in which the petitioner has abstained for more than 362 days in a service of 567 days. In the facts and circumstances, it is fit case not to be interfered under Article 226 of the Constitution of India. The writ petition is dismissed in limine.

(P.C. Pant, J.)

Dt.: 28th September, 2004

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